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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 2301

ROBERT GRENE, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Comes now Robert Grene, petitioner herein, by and through his undersigned attorneys, and respectfully prays this Honorable Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on the 11th day of March, 1965, and the order of the same Court denying rehearing entered on the 9th day of April, 1965.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is found in Appendix A hereof and the advice to counsel as to the order denying rehearing is found in Appendix B hereof.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to the provisions of Rule 37(b)(1)(2) of the Federal Rules of Criminal Procedure. The United States Court of Appeals for the Fifth Circuit rendered its opinion in this cause on the 11th day of March, 1965, (Appendix A), and thereafter a petition for rehearing was timely filed (Appendix C), and thereafter the said Court entered its order denying rehearing without opinion (Appendix B).

Petition for Extension of Time to File Petition for Writ of Certiorari was granted by an Order executed by The Honorable Hugo L. Black, extending the time for filing said petition for writ of certiorari to and including June 8th, 1965, dated on the 7th day of May, 1965.

QUESTIONS PRESENTED

I

Whether or not the Trial Court abused its discretion to deny a continuance to the Appellant, Robert Grene.

II

Whether or not Appellant Grene was denied assistance of counsel in accordance with the guarantees contained in the United States Constitution by the Trial Court allowing attorneys who had previously stated

that they could not represent the Appellant due to a conflict of interest stand in for the Appellant Grene's court-appointed attorney.

III

Whether or not the Appellant Grene was denied his right of counsel under the guarantees afforded to him under the Constitution of the United States by the Appellant Court, the Fifth Circuit Court of Appeals, appointing as his counsel in such court an attorney who had a definite conflict of interest.

IV

Whether or not the trial court committed reversible error in denying appellants' motion to disqualify the juror Mrs. Lewis for cause and for denying appellants' motion to grant additional peremptory challenges.

V

Whether or not the trial court committed reversible error in its charge to the jury whether the trial court stated as follows: "The Grand Jury returned an Indictment, and the Grand Jury, of course, its thought was unless there was an answer to it . . . they should be put up on their trial . . . and unless they answer they should be convicted."

VI

Whether or not the trial court and Circuit Court of Appeals for the Fifth Circuit committed reversible error in failing to dismiss and set aside all substantive counts pertaining to the Appellant Robert Grene alleged to have been committed prior to April 8th of

1960, the first date the Government alleges in its Indictment that the Appellant Robert Grene entered into the scheme, and subsequent to July 22nd of 1960, the date which the Indictment alleges that co-defendant George Levine purchased Credit Finance Corporation.

STATUTES AND RULES INVOLVED

United States Constitution, Fifth Amendment; United States Constitution, Sixth Amendment; Title 15, United States Code Annotated, Section 77q(a); Title 18 United States Code Annotated, Section 1341; Title 18 United States Code Annotated, Section 371; Rule 24, paragraph (b), Federal Rules of Criminal Procedure. Text of the same are set forth in Appendix I hereof.

STATEMENT OF THE CASE

Your Petitioner, Robert Grene, was accused jointly with ten other co-defendants of violating certain laws of the United States. The Indictment contained ten counts. It consisted of thirteen pages. Counts I through V of the Indictment set forth violations of Title 15, U.S.C. 77q(a), (Securities); Counts VI through IX set forth violations of Title 18, U.S.C. 1341, (Mail Fraud), and Count X of the Indictment set forth one count of conspiracy to violate the corporate security and mail fraud laws in violation of Title 18, U.S.C. 371.

The Indictment, other than mentioning Robert Grene for identification purposes, lumping him in with the other co-defendants, charged that co-defendants Gradsky sold their stock in the corporation (Credit Finance Corporation?) to Security Guaranty Company, which company was owned by the defendant Robert Grene, and of which he was president.

Thereafter, Security Guaranty, Incorporated, and the defendant, Robert Grene, would and did operate the corporation (Credit Finance Corporation?) for a certain length of time when it sold all of its stock in the corporation to George Levine.

It is unquestioned by the Indictment and unproven by the evidence that the Appellant Grene had anything to do with Credit Finance Corporation prior to the time that its stock was sold to Security Guaranty corporation, which sale, from the evidence, seems to have occurred on or about April 8th of 1960. It is unquestioned from the evidence that all of the stock of Credit Finance Corporation was sold to George Levine on July 22nd of 1960. Thus, the substantive counts only, Counts IV and V, occurred during the period of your Petitioner's association with Credit Finance by virtue of Credit Finance's ownership by Security Guaranty.

Counts I, III, VI, VII, and VIII occurred prior to Security's acquisition of April 8th of 1960. Counts II and IX occurred subsequent to the date Credit Finance was purchased by co-defendant George Levine.

No evidence of any type showed any relationship or agreements between the Gradskys and Grene, or between Grene and co-defendant Levine.

No evidence showed that any sales personnel acted upon any instructions of your Petitioner to make an unlawful statement to effect any sale. In fact, even in the Counts IV and V the purchaser denied any knowledge of your Petitioner Grene. It is thus apparent that if there was a conspiracy, there were three separate conspiracies and there should have been three separate trials.

Trial of the case was commenced June 11th of 1962. On the morning of that date, the trial judge allowed an attorney who had previously entered his appearance for the Appellant Grene to withdraw from the case. Thereafter, the trial judge requested counsel who were representing other co-defendants if they could represent the Appellant Grene. Such counsel, after consulting with their respective clients, declined to represent the Appellant Grene, because to do so might present a conflict of interest.

Thereafter, the Court assigned counsel to represent your Petitioner Grene who met such court-appointed attorney for the first time at two o'clock on the day the trial commenced. Said court-appointed attorney requested a continuance, which was denied.

On June 13th, of 1962, after the jury was impanelled, but not sworn, said attorney renewed his motion for continuance, which was again denied.

That, thereafter, a jury trial was had, and evidence was presented to the jury, a more complete and thorough statement of the evidence presented to the jury is contained herein in Appendix D. Your Petitioner was found guilty of ten counts, and, after adjudication of guilt, was sentenced to eighteen months on each count, to run *consecutively,* or a total sentence of fifteen years.

In a normal manner the cause came on for oral argument before the United States Court of Appeals and thereafter the opinion of the Court (Appendix A) was entered on the 11th day of March, 1965, and that, thereafter, a petition for rehearing was timely filed and subsequently the Court of Appeals entered its order denying rehearing without opinion (Appendix B).

REASONS FOR GRANTING THE WRIT

It is respectfully submitted that the writ sought by your petitioner should be granted for the reason that the decision of the Fifth Circuit Court of Appeals in the case at bar is in direct conflict with decisions in other jurisdictions and with decisions of this Court. *Powell* v. *Alabama,* 287 U.S. 45; *Turinetti* v. *United States,* 2 F. 2d 15; *Glasser* v. *United States,* 315 U.S. 60.

In the case at bar, on June 11th of 1962, the Court allowed your Petitioner's attorney to withdraw and appointed another attorney to represent your Petitioner. At two p.m., on the same date, the trial began. The appointed attorney made a motion for continuance, which was denied. This motion for a continuance was repeated on June 13th, after the jury was impannelled.

Thus, Petitioner Grene went to trial with a court-appointed attorney, who prior to selecting the jury, did not have an opportunity to discuss the case with his client. The Indictment was a complex one, consisting of ten counts, containing thirteen pages. There can be no question that the Constitutional guarantee contained in the Sixth Amendment is rendered meaningless if counsel does not have time to adequately prepare his case.

It is respectfully submitted that the writ sought by your Petitioner should be granted for the reason that the decision of the Fifth Circuit in the case at bar is in direct conflict with the decision of this Court in *Glasser* v. *United States,* 315 U.S. 60, in that the trial court consistently throughout the trial allowed attorneys other than Grene's court-appointed attorney to

represent Grene when such court-appointed attorney was absent even after such attorneys had indicated prior to the trial that they could not afford Grene representation due to conflict of interest.

This conflict of interest representation did not stop at the Trial Court. The Fifth Circuit Court of Appeals subsequently ordered the counsel of co-defendants Norman Gradsky and B. J. Gradsky to represent your Petitioner Grene in the Court of Appeals. Said co-defendants Gradskys was certainly the principal participant in the scheme, if any.

It is respectfully submitted that the writ sought by your Petitioner Grene should be granted for the reason that the decision of the Fifth Circuit of *Sherwood* v. *United States,* 300 F. 2d 603, is in direct conflict with the order of the Fifth Circuit in the case at bar in denying Petitioner Grene's petition for rehearing without opinion (Appendix B, Appendix C).

In support of this, it is respectfully urged that in said petition for rehearing it was pointed out to the Fifth Circuit Court of Appeals that the Court had in its opinion reversed the trial court because of the fact that three of the appellants, namely, Schiff, Roberts and Gibbons were not employed by the organization in question at the time of the commission of the substantive offenses and for that reason and for that reason alone the Fifth Circuit Court of Appeals set aside the sentences against the defendants Schiff on Counts I, III, IV, V, VI, and VII; against Gibbons, Counts I, II, III, IV, V, VII, VIII, and IX, and against Roberts on Counts I, II, IV, V, VII and IX. However, they allowed the conspiracy count to remain.

As to your Petitioner Grene, they allowed all of the counts to stand, although the evidence is clear that your Petitioner Grene did not join the organization in question until April 8th of 1960, and that he terminated his association due to the sale to co-defendant Levine on July 22nd of 1960. Thus, giving the evidence that was introduced at the trial the greatest possible weight against your Petitioner Grene. It is clear that his participation, if any, was limited to that period of time between April 8th of 1960 and July 22nd of 1960, or a total of 104 days. No evidence of any agreement Gradskys and Grene was introduced. No evidence of any agreement between Grene and co-defendant Levine was introduced. The only substantive counts that occurred during the dates of his so-called association were Counts IV and V. The Government's witnesses in each count denied any knowledge of your Petitioner Grene. It is quite clear that there should have been three trials.

It is apparent to your Petitioner that the law applied with reference to said counts as described herein by the Fifth Circuit Court of Appeals was proper for the Appellants Gibbons, Roberts and Schiff, but not for the Appellant Robert Grene. Your Petitioner is at a loss to see how the law can be applied to one and not equally to another. That the failure to apply the law as to him as was applied to the other defendants, Gibbons, Schiff and Roberts would be a denial of his rights under the Constitution of the United States. Failure of appellate counsel to present the above argument to the Court of Appeals is a further violation of Petitioner's rights guaranteed to him by the Sixth Amendment. *Glasser* v. *United States*, 315 U.S. 60.

It is further respectfully submitted that the Fifth Circuit erred in its opinion (Appendix A) in deciding the points more fully raised in your Petitioner's brief attached hereto and made a part of the petition for writ of certiorari as Appendix D.

It is further respectfully submitted that the Fifth Circuit erred in its opinion (Appendix A) in deciding the points more fully raised in the briefs of all of the other petitioners to said Fifth Circuit, all of which are incorporated by reference herein. Your petitioner further requests that all points that might be raised in this court by virtue of briefs filed by other petitioners be adopted as his own in considering this request for a petition for a writ of certiorari in this identical case for that common questions of fact are presented therein.

It is, therefore, respectfully submitted that the United States Court of Appeals for the Fifth Circuit did err in the entry of the opinion herein and in the order denying the petition for rehearing herein without opinion, and that the writ herein sought should be issued and the decision of the Fifth Circuit of the United States Court of Appeals be reversed.

Respectfully submitted,

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